



April 18, 2000

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2000-1552

Dear Mr. Hall

You ask whether certain information is subject to required public disclosure under chapter 552 of the Texas Government Code. Your request was assigned ID# 134422.

The Texas Department of Criminal Justice (the "TDCJ") received a request for information related to any allegations brought against the requestor on or about December 17, 1999. You claim that the requested information is excepted from disclosure under sections 552.108, 552.111, 552.131, and 552.107¹ of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. You assert that the investigation report pertains to an incident that concluded in a result other than conviction or deferred adjudication. Section 552.108 applies to the investigation of criminal activity. This section protects the type of information that, if revealed, might endanger the life or physical safety of law enforcement personnel, or interfere with law enforcement and crime prevention. *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App. -- El Paso 1992, writ denied). Here, the internal affairs investigation relates to a personnel matter. There is no evidence

¹TDCJ interprets section 552.107 to provide the requested records are "outside the reach of the Open Records Act" because of the ruling in *Ruiz v. Collins*, No. H-78-987 (S.D. Tex., filed Dec. 11, 1992). The Public Information Act, Government Code Chapter 552, provides that "public information" means information that is collected or maintained by a governmental body in connection with the transaction of official business. Gov't Code § 552.002. The information requested falls within that broad span. This ruling is limited to the application of sections 552.029 and 552.131 and does not consider the applicability and effect of the judgment in *Ruiz*. However, we note that *Ruiz* is still in effect and it prohibits the release of certain "sensitive information," which may include information required to be released under section 552.029. We remind you that section 552.107(2) of the Government Code requires you to withhold information that is made confidential by court order.

that a criminal investigation or prosecution resulted from the investigation. *See id.* Section 552.108 does not apply.

You further assert that section 552.111 protects the information. Section 552.111 excepts from required disclosure “[a]n interagency or intragency memorandum or letter that would not be available by law to a party in litigation with the agency” However, this office has held that section 552.111 does not protect personnel matters because such matters do not reflect the policymaking process of the governmental body. Open Records Decision No. 615 (1993). Section 552.111 does not apply to the information at hand.

You also assert that the information is protected by section 552.131. Section 552.131(a) relating to TDCJ inmates states:

Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

The information submitted contains references to an inmate; consequently, section 552.131 applies. Neither subsection (b) nor section 552.029 require release of the information related to the inmate. We have marked the information that you must withhold under section 552.131; you must release the remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/CHS/ljp

Ref: ID# 134422

Encl. Submitted documents

cc: Ms. Christina Del Bosque
303 Bennington Drive
Beeville, Texas 78102
(w/o enclosures)